REMARKS

Applicant has carefully studied the Office's communication mailed May 09, 2006. These explanatory remarks are believed to be fully responsive to the communication.

Original claims were filed with the application on February 18, 2004. The Office imposed a two-way restriction requirement on July 11, 2005, indicating that Group I, the invention of claims 1-5, was directed to a method of modulating apoptosis in a target cell population by regulating expression of E2F1. In their response, Applicant elected Group I. Group I included claim 1, which claim was directed at "A method of modulating apoptosis in a target cell population comprising the step of regulating the expression of E2F1 whereby the expression of Mcl-1 is increased responsive to the downregulation of E2F1." Claim 2 of Group I was dependent upon claim 1 and indicated that "the apoptosis being modulated is Flavipiridol-induced apoptosis." Thus, flavipiridol is a necessary component in the apoptic population of claim 2. Furthermore, the expression of E2F1 is being regulated in claim 2.

In the Office Action dated November 11, 2005, The Office has indicated that "claim 1 is directed to a method of modulating apoptosis in a cell by regulating the expression of E2F1."[1] The Office has further indicated that "Claim 1 has as the sole active step 'regulation of expression of E2F1', a scope that that encompasses both upregulation and downregulation."[2]

Applicant responded in Amendment A dated March 07, 2006 by, among other things, canceling claims 1-11 and adding claims 12-15. Claim 12 is directed to "A method of inducing apoptosis in a target cell population comprising the steps of: introducing flavipiridol to the target cell population; and introducing one or more compounds that increase the expression of E2F1."

In the letter dated May 09, 2006 the Office has asserted:

> The amendment filed on March 7, 2006 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the elected invention was directed to modulation of apoptosis by downregulating expression of E2F1 as in original claim 3.

[1] Office Action dated November 11, 2005 at page 9.
[2] *Id.* at page 4.

The new claims are directed to methods of inducing apoptosis using compounds that increase expression of E2F1. These claims would have been properly restricted from the elected invention if they had been presented earlier.

Applicant respectfully disagrees with the Office's assertion, and accompanying arguments in support of the assertion, that the remaining claims are not readable on the elected invention.

The letter indicated that the remaining claims are not readable on the elected invention with reference to claim 3. Such an assertion is inapposite as claim 3 was dependent on claim 1. The remaining claims are readable upon claim 1, as claim 1 is broader than claim 3. Inducing apoptosis as in claim 12 is necessarily encompassed within the greater realm of modulating apoptosis as in claim 1. Increasing the expression of E2F1, as in claim 12 necessarily reads on regulating expression of E2F1 as in claim 1. Introducing flavipiridol to the target cell population as in claim 12 is readable upon the limitation of claim 2 that the apoptosis is flavipiridol-induced apoptosis as in claim 2.

Applicant respectfully requests the Office to examine the newly added claims in the Amendment A filed March 07, 2006 on the merits.

Very respectfully,

SMITH & HOPEN

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CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R.1.8(a))

I HEREBY CERTIFY that this Response A is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 1635, Attn: Tracy Ann Vivlemore, (571) 273-8300, on May 17, 2006.

Date: May 17, 2006

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April Turley